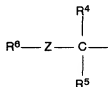


corrected the numbers of the compounds set out in Table I (pages 31 to 40). The Examiner will note that the first compound erroneously was numbered "I-195" instead of --I-1--.

No new matter has been added. In view of the foregoing, all of the application should now be in proper form.

The Examiner has required a restriction under 37 C.F.R. §1.475 and 37 C.F.R. §1.499 finding that compounds I lack a common structural element shared by all compounds and defining the contribution of Applicants' invention over the art. Favorable reconsideration of the restriction requirement is urged in the light of the following:

The "special technical features" that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art - as required under 37 C.F.R. §1.475(a) - is represented by the combination of the specially designed sub-structure (b)



in the  $\beta$ -position of an  $\alpha$ -azoyl-,  $\alpha$ -azolyloxy- or  $\alpha$ -azoylthio-carboxylic acid derivative. The special feature of the sub-structure (b) lies in the combination of two aromatic radicals ( $R^4$  and  $R^5$ ) with a radical  $R^6$  bonded through a heteroatom or heteroatomic group "Z".

The Examiner has required a Restriction under 35 U.S.C. §121 and §372 between

- Group I: drawn to compounds I, when X is nitrogen;
- Group II: drawn to compounds I, when X is  $CR^{14}$  and  $R^{14}$  does not form an additional ring;
- Group III: drawn to compounds I, when X is  $CR^{14}$  and  $R^{14}$  along with  $CR^3$  forms a 5-membered alkylene or alkenylene ring;
- Group IV: drawn to compounds I, when X is  $CR^{14}$  and  $R^{14}$  along with  $CR^3$  forms a 6-membered alkylene or alkenylene ring;
- Group V: drawn to compounds I, when X is  $CR^{14}$  and  $R^{14}$  along with  $CR^3$  forms a 5-membered alkylene or alkenylene ring further comprising oxygen or sulfur as a ring member;

Group VI: drawn to compounds I, when X is CR<sup>14</sup> and R<sup>14</sup> along with CR<sup>3</sup> forms a 6-membered alkylene or alkenylene ring further comprising oxygen or sulfur as a ring member;

Group VII: drawn to compounds I, when X is CR<sup>14</sup> and R<sup>14</sup> along with CR<sup>3</sup> forms a 5-membered alkylene or alkenylene ring further comprising nitrogen as a ring member;

Group VIII: drawn to compounds I, when X is CR<sup>14</sup> and R<sup>14</sup> along with CR<sup>3</sup> forms a 6-membered alkylene or alkenylene ring further comprising nitrogen as a ring member;

alleging that the inventions claimed are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Applicants herewith provisionally elect the claims of Group II (Claims 2 to 11) with traverse. Favorable reconsideration of the restriction requirement is urged in the light of the following:

The application has been filed under 35 U.S.C. §371 as a national phase application of PCT/EP 95/03,963 and, as such, is subject to the PCT requirement since

*no national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations. [see PCT Article 27(1)]*

The rationale governing the determination of unity of invention under PCT Rule 13.1 to 13.4 is the question of "technical relationship" as for instance explained in the PCT Administrative Instructions and Annex B, section (b):

*Unity of invention exists only when there is a technical relationship among the claimed inventions involving*

- one or more*
- of*
- the same or corresponding special technical features.*

*The expression "special technical features" is defined in Rule 13.2 as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. [see PCT Administrative Instructions, Annex B as set out in MPEP Annex AI page 38, col. 1, second para., substructure added]*

In the present case the "special technical feature" defining the contribution which each of the claimed inventions makes over the prior art lies in the structural particularity of compounds I, in particular in the combination of sub-structure (b) in the  $\beta$ -position of an  $\alpha$ -azolyl-,  $\alpha$ -azolyloxy- or  $\alpha$ -azolylthio-carboxylic acid derivative. This particular arrangement constitutes the "special technical feature" which is common to all compounds embraced by Claim 1, and which defines a contribution which each of these inventions, considered as a whole, makes over the prior art. Since the Examiner provides no evidence that this technical feature does not make a contribution over the prior art, a holding of lack of unity of invention of Claim 1 is inconsistent with PCT Rule 13.2 and 37 C.F.R. \$1.475(a).

In light of the foregoing, traversal of the restriction requirement is deemed proper.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,

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